Dated: August 18, 1995.

W. Michael McCabe,

Regional Administrator.

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40 CFR Part 70

[NC–95–01; FRL–5288–2]

Clean Air Act Proposed Interim Approval of Operating Permit Program; North Carolina, Western North Carolina Mecklenburg County, Forsyth County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the operating permit programs submitted by the State of North Carolina Department of Health, Environment and Natural Resources (DEHNR), Western North Carolina Regional Air Pollution Control Agency (WNCRAPCA), Forsyth County Department of Environmental Affairs (FCDEA), and Mecklenburg County Department of Environmental Protection (MCDEP) for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by September 28, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of the DEHNR, WNCRAPCA, FCDEA, and MCDEP submittals and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3555, Ext. 4153.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act (''the Act'') as amended by the 1990 Clean Air Act Amendments, EPA promulgated rules on July 21, 1992 (57 FR 32250), that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires states to develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR Part 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. EPA received the DEHNR, WNCRAPCA, FCDEA, and MCDEP's title V operating permit program submittals on November 12, 1993. The State provided EPA with additional materials in supplemental submittals dated December 17, 1993, February 28, 1994, May 31, 1994, and August 9, 1995. Because these supplements materially changed the State's title V program submittal, EPA has extended the review period and will work expeditiously to promulgate a final decision on the State's program.

EPA reviews state operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not granted full or interim approval to a whole program by November 15, 1995, it must establish and implement a Federal operating permit program for that state.

B. Federal Oversight and Sanctions

If EPA grants interim approval to the DEHNR, WNCRAPCA, FCDEA, and MCDEP programs, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State of North Carolina, WNCRAPCA, FCDEA, and MCDEP would not be subject to sanctions, and EPA would not be obligated to promulgate, administer, and enforce a Federal permit program for the State. Permits issued under a program with interim approval are fully effective with respect to part 70, and the 12-month time period for submittal of permit applications by sources subject to part 70 requirements begins upon the effective date of final interim approval, as does the three-year time period for processing the initial permit applications.

Following the granting of final interim approval, if the DEHNR, WNCRAPCA, FCDEA, or MCDEP failed to submit complete corrective programs for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the DEHNR, WNCRAPCA, FCDEA, or MCDEP then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that DEHNR, WNCRAPCA, FCDEA, or MCDEP had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of DEHNR, WNCRAPCA, FCDEA, or MCDEP, both sanctions under section 179(b) would apply after the expiration of the 18-month period and would extend until the Administrator determined that these programs had come into compliance. In any case, if, six months after application of the first sanction, DEHNR, WNCRAPCA, FCDEA, or MCDEP still had not submitted a corrective program that EPA found complete, the second sanction would be applied.

If, following final interim approval, EPA were to disapprove any of the North Carolina State or local program complete corrective programs, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the DEHNR, WNCRAPCA, FCDEA, or MCDEP had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the North Carolina State or local agencies, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the North Carolina State or local agencies had come into compliance. In all cases, if six months after EPA applied the first sanction, the North Carolina State or local agencies had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a state program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permit program for that state upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA believes that the operating permit programs submitted by the DEHNR, WNCRAPCA, FCDEA, and MCDEP substantially meet the requirements of title V and part 70, and EPA proposes to grant interim approval to these programs. For detailed information on the analysis of the State and local agency submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

On November 12, 1993, EPA received the title V operating permit programs submitted by the DEHNR, WNCRAPCA, FCDEA, and MCDEP. The DEHNR requested, under the signature of the State of North Carolina Governor's designee, approval of its operating permit program with full authority to administer the program in all areas of the State of North Carolina, with the exceptions of Indian reservations and tribal lands. The State and local agencies submitted supplements to their title V operating permits programs submittals dated December 17, February 28, 1994, May 31, 1994, and July 27, 1995.

The DEHNR, WNCRAPCA, FCDEA, and MCDEP submittals address, in Section II entitled ''Complete Program Description,'' the requirement of 40 CFR Part 70.4(b)(1) by describing how the State and local agencies intend to carry out their responsibilities under the part 70 regulations. EPA believes the program descriptions are sufficient for meeting the requirement of 40 CFR Part 70.4(b)(1).

Pursuant to 40 CFR Part 70.4(b)(3), each state is required to submit a legal opinion from the Attorney General (or the attorney for the state air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of the title V operating permit program. The DEHNR submitted a General Counsel Opinion and a Supplementary General Counsel Opinion demonstrating adequate legal authority as required by Federal law and regulation. WNCRAPCA, FCDEA, and MCDEP each submitted a General Counsel Opinion. EPA believes that these opinions adequately address the thirteen provisions listed at 40 CFR 70.4(b)(3)(i)–(xiii).

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms, and relevant guidance to assist in the State's implementation of its permit program. Section IV of the DEHNR, WNCRAPCA, and FCDEA submittals and Appendix C of the MCDEP submittal include permit application forms. EPA has determined that the application forms meet the requirements of 40 CFR Part 70.5(c).

2. Regulations and Program Implementation

The State of North Carolina developed 15A North Carolina Administrative Code (NCAC) Subchapter 2Q.0500 entitled ''Title V Procedures'' for the implementation of the substantive requirements of 40 CFR part 70. The State also made changes to 15A NCAC 2Q.0200 and 15A NCAC 2Q.0100 to implement other part 70 requirements. These rules, and several other rules and statutes providing for State permitting and administrative actions, were submitted by North Carolina with sufficient evidence of procedurally correct adoption as required by 40 CFR Part 70.4(b)(2). The FCDEA adopted the State regulations verbatim in the Forsyth County Air Quality Technical Code (FCAQTC) Subchapter 3Q Sections .0500, .0100, and .0200. The WNCRAPCA adopted the State regulations verbatim in WNCRAPCA Rules and Regulations (WNCRAPCARR) Chapter 17 Sections .0500, .0100, and .0200. The MCDEP adopted the State regulations verbatim in Mecklenburg County Air Pollution Control Ordinance (MCAPCO) Article 1 Sections .5500, .5231, .5211. The local programs contain regulations that differ from the State program concerning the collection of title V fees. Since the local agency programs adopted the State regulations verbatim with the exception of fee collection, this proposed rulemaking will discuss the State regulations and how they meet the requirements of part 70 and follow with regulatory citations for the local agency regulations which implement the equivalent State regulation. Fee regulations will be discussed separately for each local agency.

The DEHNR program, in Regulation 15A NCAC 2Q.0502 (MCAPCO Regulation 1.5502, FCAQTC Regulation 3Q.0502, and WNCRAPCARR Regulation 17.0502), substantially meets the requirements of 40 CFR Part 70.2 and 70.3 regarding applicability. However, Regulation 15A NCAC 2Q.0502(c) (MCAPCO Regulation 1.5502(c), FCAQTC Regulation 3Q.0502(c), and WNCRAPCARR Regulation 17.0502(c)) allows Research and Development (R&D) facilities to be treated as separate facilities from other stationary facilities that are part of the same industrial grouping, are located on contiguous or adjacent property, and are under common control. Such an approach is inconsistent with the definition of major source found in 40 CFR Part 70.2, which requires all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping to be considered as the same facility. However, EPA notes that relatively few sources will be excluded from the scope of the State's title V program as a result of this approach. Moreover, the State has committed to undertake a rulemaking designed to assure that R&D facilities that are collocated with manufacturing facilities and which are under common control and belonging to a single major industrial grouping will be considered as the same facility for determining title V applicability to the source. Finalization of this rulemaking is a prerequisite to obtaining full program approval.

The DEHNR, WNCRAPCA, FCDEA, and MCDEP definition of ''title I modification'' does not include changes reviewed under a minor source preconstruction review program (''minor NSR changes''). The EPA is currently in the process of determining the proper definition of that phrase. As further explained below, EPA has solicited public comment on whether the phrase ''modification under any provision of title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include state preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow state programs with a more

narrow definition of ''title I modifications'' to receive interim approval (59 FR 44572). The Agency explained its view that the better reading of ''title I modifications'' includes minor NSR and pre-1990 NESHAP requirements, and solicited public comment on the proper interpretation of that term (59 FR 44573). The Agency stated that if, after considering the public comments, it continued to believe that the phrase ''title I modifications'' should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow states with a narrower definition to be eligible for interim approval.

The EPA hopes to finalize its rulemaking revising the interim approval criteria under 40 CFR 70.4(d) expeditiously.[1] If EPA establishes in its rulemaking that the definition of ''title I modifications'' can be interpreted to exclude changes reviewed under minor NSR programs, the definition of ''title I modification'' would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, the DEHNR, WNCRAPCA, FCDEA, and MCDEP definition of ''title I modifications'' will become a basis for interim approval. If the definition becomes a basis for interim approval as a result of EPA's rulemaking, the DEHNR, WNCRAPCA, FCDEA, and MCDEP would be required to revise their definition to conform to the requirements of part 70.

Accordingly, today's proposed approval does not identify the DEHNR, WNCRAPCA, FCDEA, and MCDEP definition of ''title I modification'' as necessary grounds for either interim approval or disapproval. Again, although EPA has reasons for believing that the better interpretation of ''title I modifications'' is the broader one, EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue.

The DEHNR program, in Regulation 15A NCAC 2Q.0507 and associated permit application forms (MCAPCO Regulation 1.5507, FCAQTC Regulation 3Q.0507, and WNCRAPCARR Regulation 17.0507), substantially meets the requirements of 40 CFR Part 70.5 for complete permit application forms. However, Regulation 15A NCAC 2Q.0507 (MCAPCO Regulation 1.5507, FCAQTC Regulation 3Q.0507, and WNCRAPCARR Regulation 17.0507) does not require an applicant to include all fugitive emissions regardless of whether such emissions will be used to determine title V applicability. Pursuant to 40 CFR Part 70.3(d), an applicant must include all fugitive emissions regardless of whether such emissions will be used to determine title V applicability. The State has committed to undertake a rulemaking designed to assure that this requirement in 40 CFR Part 70.3(d) is included in the State's regulations. Finalization of this rulemaking is a prerequisite to obtaining full program approval.

Section 70.4(b)(2) requires state and local agencies to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state or local program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state or local agency must request and EPA must approve as part of that program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of part 70 program under review.

For other state programs, EPA has proposed to accept, as sufficient for full approval, potential per emission unit levels for insignificant activities of 5 tons per year for criteria pollutants and the lesser of 1000 pounds per year or section 112(g) de minimis levels for hazardous air pollutants (HAP). Provided the State or local program does not allow applications to omit information needed to determine the applicability of, or to impose any applicable requirement, or to evaluate the fee amount required under the program's approved fee schedule, EPA believes that these levels are sufficiently below applicability thresholds for many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application and are consistent with current permitting thresholds in the State of North Carolina.

The State and local agency title V programs include three different approaches to establishing insignificant activities and emissions levels. Regulation 15A NCAC 2Q.0102(b)(1) (MCAPCO Regulation 1.5211(e)(1), FCAQTC Regulation 3Q.0102(b)(1), and WNCRAPCARR Regulation 17.0102(b)(1)) establishes exemptions according to source category and activity. These activities are not required to be included in permit applications or permits issued by the State or local agencies. Regulation 15A NCAC 2Q.0102(b)(2) (MCAPCO Regulation 1.5211(e)(2), FCAQTC Regulation 3Q.0102(b)(2), and WNCRAPCARR Regulation 17.0102(b)(2)) establishes exemptions on the basis of size or production rate. These activities are required to be included in the permit application but are not required to be included in a facility's permit. Some of these activities are exempted at levels of up to 40 tpy for criteria pollutants. These levels are a substantial fraction of the major source threshold and would almost certainly exclude units with applicable requirements. EPA, therefore, finds that these emission levels are too high to be considered insignificant. EPA proposes that, in order to obtain full approval, the State must revise this regulation to revise these threshold levels downward from potential emissions of 40 tpy for these activities to potential per emission unit levels for insignificant activities of 5 tons per year for criteria pollutants and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAP or such other level as the State or local agencies can demonstrate will not be likely to interfere with determining and imposing an applicable requirement. Regulation 15A NCAC 2Q.0102(b)(2)(F) (MCAPCO Regulation 1.5211(e)(2)(F), FCAQTC Regulation 3Q.0102(b)(2)(F) and WNCRAPCARR Regulation 17.0102(b)(2)(F)) allows an applicant to demonstrate to the satisfaction of the respective air program Director that an activity would be negligible in air quality impacts, not require an air pollution control device, and not violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater. If an applicant could demonstrate that an activity qualified under the above criteria or conditions, the activity would then be considered as an insignificant activity. In order to obtain full program approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must revise their

[1] Publication of the proposed interim approval criteria revisions was delayed until August 29, 1994, and EPA received several requests to extend the public comment period until November 27, 1994. Given the importance of the issues in that rulemaking to states, sources and the public, but mindful of the need to take action quickly, EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122 (October 14, 1994)).

regulations to provide that any insignificant activity granted under 15A NCAC 2Q.0102(b)(2)(F) or other respective local agency regulations would be limited to potential per emission unit levels for insignificant activities of 5 tons per year for criteria pollutants and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAP.

EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in the State of North Carolina. This request for comment is not intended to restrict the ability of the North Carolina State and local agencies to propose and EPA to approve other emission levels if the State and local agencies demonstrate that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

The DEHNR program, in Regulations 15A NCAC 2Q.0508 through 2Q.0513 and 2Q.0523 (MCAPCO Regulations 1.5508 through 1.5513 and 1.5523, FCAQTC Regulation 3Q.0508 through 3Q.0513 and 3Q.0523, and WNCRAPCARR Regulation 17.0508 through 17.0513 and 17.0523), substantially meets the requirements of 40 CFR Parts 70.4, 70.5, and 70.6 for permit content (including operational flexibility). The DEHNR, WNCRAPCA, FCDEA, and MCDEP programs do provide for limited use of off-permit changes as described in 40 CFR 70.4(b)(14). However, the State and local agency programs limit the use of off-permit to changes which are not governed by applicable requirements and changes which are insignificant activities that remain as insignificant activities after the change.

Part 70 requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define ''prompt'' for purposes of administrative efficiency and clarity, an acceptable alternative is to define ''prompt'' in each individual permit. EPA believes that ''prompt'' should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

Regulation 15A NCAC 2Q.0508(f)(3) (MCAPCO Regulation 1.5508(f)(3), FCAQTC Regulation 3Q.0508(f)(3), and WNCRAPCARR Regulation 17.0508(f)(3)) defines ''prompt'' in the DEHNR program with respect to the reporting of deviations. The regulations require a permittee to report by the next business day deviations from permit requirements or any excess emissions and to follow up this report within two business days with a written report to the respective air pollution control agency.

The DEHNR, WNCRAPCA, FCDEA, and MCDEP have the authority to issue variances from requirements imposed by State law. North Carolina General Statutes (G.S.) 143–215.3E allows the DEHNR, WNCRAPCA, FCDEA, and MCDEP discretion to grant relief from compliance with State statutes and rules. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of State law. EPA has no authority to approve provisions of state law, such as the variance provision referred to, that are inconsistent with title V or other applicable requirements of the Act and would render permits and the applicable requirements they implement unenforceable. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is consistent with the applicable requirements of the Act and is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

Regulation 15A NCAC 2Q.0513 through 2Q.0516 and 2Q.0521 (MCAPCO Regulation 1.5513 through 1.5516 and 1.5521, FCAQTC Regulation 3Q.0513 through 3Q.0516 and 3Q.0521, and WNCRAPCARR Regulation 17.0513 through 17.5516 and 17.5521), substantially meets the permit processing requirements of 40 CFR 70.7 (including minor permit modifications) and 70.8. However, Regulation 15A NCAC 2Q.0514(a)(4) (MCAPCO Regulation 1.5514(a)(4), FCAQTC Regulation 3Q.0514(a)(4), and WNCRAPCARR Regulation 17.0514(a)(4)) allows administrative permit amendments to be used to change test dates or construction dates. While EPA believes that this is an acceptable way to utilize administrative permit amendments, EPA is concerned that this provision could be used to alter other requirements of the Act. The State has proposed changes to this regulation that if adopted will clarify that such changes can be accommodated under an administrative amendment such that no applicable requirements are violated. Regulation 15A NCAC 2Q.0514(a)(5) (MCAPCO Regulation 1.5514(a)(5), FCAQTC Regulation 3Q.0514(a)(5), and WNCRAPCARR Regulation 17.0514(a)(5)) allows administrative permit amendments to move terms and conditions from the State-enforceable only portion of the permit to the State-and-Federal enforceable portion of the permit. EPA does not believe that all such changes would qualify to be treated as administrative permit amendments. The State has proposed changes to this regulation that if adopted will clarify that 15A NCAC 2Q.0514(a)(5) will only be used for those requirements which have become Federally enforceable through section 110, 111, or 112 or other parts of the Clean Air Act. Regulation 15A NCAC 2Q.0515(f) (MCAPCO Regulation 1.5515(f), FCAQTC Regulation 3Q.0515(f), and WNCRAPCARR Regulation 17.0515(f)) grants a permit shield for minor permit modifications once a minor permit modification has been approved by the State and EPA. Section 70.7(e)(2)(vi) expressly prohibits a permit shield for minor permit modifications. The State has proposed changes to this regulation that if adopted will clarify that a permit shield may not be granted for minor permit modifications. Regulation 15A NCAC 2Q.0515(d) does not make provisions for the event a single minor permit modification would exceed the thresholds listed in Regulation 15A

NCAC 2Q.0515(c). In this instance, 40 CFR 70.7 requires that a minor permit modification be processed within 90 days after receiving an application or 15 days after the end of EPA's 45-day review period, whichever is later. The State has proposed changes to this regulation that if adopted will clarify in the event a single minor permit modification is submitted that exceeds the thresholds listed in Regulation 15A NCAC 2Q.0515(c) the minor permit modification will be processed within 90 days after receiving the minor permit modification or 15 days after the end of the EPA's 45-day review period, whichever is later. Regulation 15A NCAC 2Q.0517(b) (MCAPCO Regulation 1.5517(b), FCAQTC Regulation 3Q.0517(b), and WNCRAPCARR Regulation 17.0517(b)) stipulates that any permit reopening will be completed within 18 months after submittal of a complete application is required or within 18 months after the applicable requirement is promulgated if no application is required. Section 70.7(f) requires that a title V permit be reopened and the newly applicable requirement added within 18 months after the applicable requirement is promulgated regardless of whether a permit application is required to be submitted. The State has proposed changes to this regulation that if adopted will clarify that a title V permit be reopened and the new applicable requirement added within 18 months after the applicable requirement is promulgated. Regulation 15A NCAC 2Q.0517(b)(2) (MCAPCO Regulation 1.5517(b)(2), FCAQTC Regulation 3Q.0517(b)(2), and WNCRAPCARR Regulation 17.0517(b)(2)) requires that no reopening of a permit is required if the effective date of a new applicable requirement is after the expiration of the permit term. Section 70.7(f)(1)(i) stipulates that no reopening of a permit term is required if the effective date of a newly applicable requirement is after the expiration of the permit term unless the permit term was extended based on the fact that the State had not renewed the permit prior to the expiration of the permit. The State has proposed changes to this regulation that if adopted will clarify that no reopening of a permit term is required if the effective date of a newly applicable requirement is after the expiration of the permit term unless the permit term was extended based on the fact that the State had not renewed the permit prior to the expiration of the permit. Regulation 15A NCAC 2Q.0518(f) (MCAPCO Regulation 1.5517(f), FCAQTC Regulation 3Q.0517(f), and WNCRAPCARR Regulation 17.0517(f)) provides that final permit action will be taken within 18 months of a submittal of a completed application, subject to adjudication, for a significant permit modification or issuance of a title V permit. Section 70.7(a)(2) requires that a state must issue a final permit within 18 months after a complete application is received. Since this requirement is not subject to adjudication, the State has proposed changes to this regulation that if adopted will remove the phrase ''subject to adjudication'' from this regulation. Finalization of these proposed changes is required as a condition to full approval of the DEHNR, WNCRAPCA, FCDEA, and MCDEP programs.

The public participation requirements of 40 CFR 70.7(h) were addressed in Regulation 15A NCAC 2Q.0521 (MCAPCO Regulation 1.5521, FCAQTC Regulation 3Q.0521, and WNCRAPCARR Regulation 17.0521). The North Carolina State and local agency programs also substantially meet the requirements of 40 CFR 70.11 regarding enforcement authority.

The aforementioned TSD contains the detailed analysis of the DEHNR, WNCRAPCA, FCDEA, and MCDEP programs and describes the manner in which these program substantially meet all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton + CPI is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

The State of North Carolina, Forsyth County, and Mecklenburg County have elected to assess a title V operating permit fee that is equivalent to the Federal presumptive minimum fee amount. These agencies do so by collecting an annual recurring flat fee in addition to collecting a fee per ton of actual emissions. When the annual recurring fee is added to the corresponding fee per ton of actual emissions, the result is that each agency is collecting the presumptive fee. Each agency's fee amounts differ based on program costs, number of air pollution-emitting facilities, and the amount of each regulated pollutant emitted that would produce the needed revenue for funding the title V permit program operations. The DEHNR assesses a $14.63 per ton fee plus an annual recurring flat fee of $5,100 for existing sources, $10,900 for a new title V source, $7,200 for every significant modification, $700 for every minor modification, and a $21,200 fee for every new title V source which is also a Prevention of Significant Deterioration (PSD) facility. The MCDEP assesses a per ton fee of $25 per ton plus the CPI. In addition, the County charges application fees for modifications, initial permit issuance, and a surcharge for complex processes which require greater staff time to evaluate. The FCDEA assesses a $24 per ton fee plus an annual recurring flat fee of $4000. Each of the three agencies submitted a fee demonstration which showed that the fees collected will adequately cover the anticipated costs of the operating permit program for the years 1995 through 1999.

The WNCRAPCA opted to charge less than the presumptive minimum fee. The Agency's program submittal, therefore, included a detailed fee demonstration in accordance with 40 CFR 70.9(b)(5). The fee demonstration showed that the Agency was in fact collecting fees adequate to support the title V permitting program. The Agency is charging $21.29 per ton as well as an annual recurring flat fee of $5000 per facility.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation

In its program submittal, the DEHNR, WNCRAPCA, FCDEA, and MCDEP agencies demonstrated adequate legal authority to implement and enforce all section 112 requirements through a title V permit. This legal authority is contained in the North Carolina General Statutes and in the North Carolina Administrative Code in regulatory provisions defining ''applicable requirements'' and provisions stating that permits must address all applicable requirements. EPA has determined that this legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that the DEHNR, WNCRAPCA, FCDEA, and MCDEP agencies are able to carry out all section 112 activities with respect to part 70

and non-part 70 sources. For further rationale on this interpretation, please refer to the TSD.

b. Implementation of 112(g) Upon Program Approval

EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the North Carolina State and local agencies must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

EPA is aware that the DEHNR, WNCRAPCA, FCDEA, and MCDEP lack a program designed specifically to implement section 112(g). However, the DEHNR, WNCRAPCA, FCDEA, and MCDEP do have preconstruction review programs that can serve as adequate implementation vehicles during the transition period because it would allow the State and local programs to select control measures that would meet maximum achievable control technology (MACT), as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of the State of North Carolina's preconstruction review program found in Regulation 15A NCAC 2Q.0300 through 15A NCAC 2Q.0311 (MCAPCO Regulation 1.5210 through 1.5221, FCAQTC Regulation 3Q.0300 through 3Q.0311, and WNCRAPCARR Regulation 17.0300 through 17.0311), under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between EPA's section 112(g) regulation promulgation and adoption of a State rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State and local regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State and local agencies to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated

The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a state program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the DEHNR, WNCRAPCA, FCDEA, and MCDEP programs contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of the DEHNR, WNCRAPCA, FCDEA, and MCDEP programs for receiving delegation of future section 112 standards and infrastructure programs that are unchanged from the Federal standards as promulgated. In addition, EPA proposes delegation of all existing standards and infrastructure programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[2]

The DEHNR, WNCRAPCA, FCDEA, and MCDEP agencies have informed EPA that they intend to accept the delegation of future section 112 standards on an automatic basis. The details of this delegation mechanism are set forth in an addendum to the North Carolina State and local agencies' title V program submittals.

d. Commitment to Implement Title IV of the Act

The DEHNR, WNCRAPCA, FCDEA, and MCDEP committed to take action, following promulgation by EPA of regulations implementing sections 407 and 410 of the Act, or revisions to either part 72 or the regulations implementing sections 407 or 410, to either incorporate the revised provisions by reference or submit State and local regulations implementing these provisions. In a subsequent review, it was found that several additions were needed to the acid rain regulations for the State and local agency rules to be adequate. In a letter dated August 7, 1995, the State committed to ensure that an acid rain rule which is acceptable to EPA will be state-effective by April 1, 1996. The WNCRAPCA, FCDEA, and MCDEP have agreed to update their regulations upon the State's finalization of an acceptable acid rain regulation.

B. Proposed Actions

EPA proposes interim approval of the operating permit programs submitted by the DEHNR, WNCRAPCA, FCDEA, and MCDEP on November 12, 1993, and as supplemented on December 17, 1993, February 28, 1994, May 31, 1994, and July 27, 1995. If promulgated, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must make the following changes to receive full approval:

1. Definition of ''Major Source''

To obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must complete a rulemaking removing Regulation 15A NCAC 2Q.0502(c) (MCAPCO Regulation 1.5502(c), FCAQTC Regulation 3Q.0502(c), and WNCRAPCARR Regulation 17.0502(c)) to assure that R&D facilities which are collocated with manufacturing facilities and which are under common control and belonging to a single major industrial grouping will be considered as the same facility for determining title V major source applicability for a facility.

2. Inclusion of Fugitive Emissions in Permit Applications

To obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must amend their regulations such that an applicant must include all fugitive emissions regardless of whether such emissions will be used to determine title V applicability.

[2] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

3. Insignificant Activities

To obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must revise Regulation 15A NCAC 2Q.0102(b)(2)(B) to adjust the insignificant emission threshold levels downward from potential emissions of 40 tpy to potential per emission unit levels for insignificant activities of 5 tons per year for criteria pollutants and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAP. The DEHNR, WNCRAPCA, FCDEA, and MCDEP must also revise Regulation 15A NCAC 2Q.0102(b)(2)(F) to provide that the list granted under 15A NCAC 2Q.0102(b)(2)(F) must be subject to the above-mentioned potential emission caps.

4. Administrative Permit Amendment Applicability

To obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must change Regulation 15A NCAC 2Q.0514(a)(4) to clarify that administrative permit amendments may be used to change test dates or construction dates only as long as no applicable requirements would be violated by doing so. Also, the DEHNR, WNCRAPCA, FCDEA, and MCDEP agencies must change the language of Regulation 15A NCAC 2Q.0514(a)(4) to clarify an administrative permit amendment may used to move terms and conditions from the State-enforceable side of the permit to the State and Federal enforceable portion of the permit provided that the term being moved is a requirement which has become Federally enforceable through sections 110, 111, or 112 or other parts of the Clean Air Act.

5. Minor Permit Modifications

To obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must change Regulation 15A NCAC 2Q.0515(f) to stipulate that a permit shield may not be granted for any minor permit modification. In addition, to obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must change Regulation 15A NCAC 2Q.0515(d) to specify that in the event an applicant submits a single minor permit modification which exceeds the thresholds listed in 15A NCAC 2Q.0515(c), the minor permit modification must be processed within 90 days after receiving the application or 15 days after the end of EPA's 45 day review period, whichever is later.

6. Permit Reopenings To Incorporate Newly Applicable Requirements

To obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must amend Regulation 15A NCAC 2Q.0517(b) to provide that a title V permit shall be reopened and reissued within 18 months after a newly applicable requirement is promulgated. Also, to obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must amend Regulation 15A NCAC 2Q.0517(b)(2) to clarify that no reopening of a permit is required only if the effective date of a newly applicable requirement is after the expiration of the permit, unless the term of the permit was extended based on the fact that the DEHNR, WNCRAPCA, FCDEA, and MCDEP had not renewed the permit prior to its expiration.

7. Final Action on Permit Issuance

To obtain full approval, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must amend Regulation 15A NCAC 2Q.0518(f) to remove the phrase ''subject to adjudication.''

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the DEHNR, WNCRAPCA, FCDEA, and MCDEP are protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal operating permit program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of the DEHNR, WNCRAPCA, FCDEA, and MCDEP part 70 programs that EPA proposes to interimly approve in this notice would apply to all part 70 sources (as defined in the approved program) within the State, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

As discussed above in section II.A.4.c., EPA also proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to the DEHNR, WNCRAPCA, FCDEA, and MCDEP for receiving delegation of future section 112 standards and infrastructure programs that are unchanged from Federal standards as promulgated. In addition, EPA proposes to delegate existing standards and infrastructure programs under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed interim approval. Copies of the DEHNR, WNCRAPCA, FCDEA, and MCDEP submittals and other information relied upon for the proposed interim approval are contained in docket number NC–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) to serve as the record in case of judicial review. EPA will consider any comments received by September 28, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small

governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 18, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–21415 Filed 8–28–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7146]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Calhoun County (Unincorporated Areas).	Two Bayou Main Canal	Approximately 300 feet downstream of State Highway 4.	None	*113
			Just downstream of a railroad spur located approximately 2,000 feet upstream of confluence of Dogwood Creek.	None	*123